



COUNTY OF MERCER
OFFICE OF THE COUNTY COUNSEL
McDADE ADMINISTRATION BUILDING
640 SOUTH BROAD STREET
P.O. BOX 8068
TRENTON, NEW JERSEY 08650-0068
(609) 989-6511
(609) 392-8625 Fax

BRIAN M. HUGHES
COUNTY EXECUTIVE

ANDREW A. MAIR
COUNTY ADMINISTRATOR

KELVIN S. GANGES
CHIEF OF STAFF

December 15, 2014

ARTHUR R. SYPEK, JR.
COUNTY COUNSEL

Hon. Joel A. Pisano, U. S. D. J.
United States District Court
Clarkson S. Fisher Federal Building & U.S. Courthouse
402 E. State Street
Trenton NJ 08608

Re: BRRAM, Inc., et al. v. United States Federal Aviation Administration, et al.
Civil Action No. 3:14-cv-02686 (JAP) (DEA)
Motion Return Date: To be set by the Court

Dear Judge Pisano:

This office represents Defendant Mercer County Board of Chosen Freeholders (hereinafter "County Freeholders") in the captioned matter. The County Freeholders have filed a motion seeking to dismiss the complaint filed by Plaintiffs BRRAM, Inc., and numerous individuals (hereinafter collectively "the Plaintiffs") for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The Plaintiffs have filed a memorandum of opposition which addresses the County Freeholders' motion. Due to the limited issue at hand, it is respectfully submitted that a reply brief is not necessary, but rather, this letter memorandum sufficiently sets forth the County Freeholders' response. Local R. Civ. P. 7.1(d)(4).

LEGAL ARGUMENT

Plaintiffs have conceded they have no opposition to the County Freeholders' motion.

The County Freeholders, as well as Co –Defendant United States Federal Aviation Administration (hereinafter “FAA”) and co—Defendant Frontier Airlines, Inc., (hereinafter “Frontier”) filed their respective motions seeking to dismiss the Plaintiffs’ Complaint on or about August 18, 2014. Dkt. entry nos. 21 (Frontier), 23 (County Freeholders) and 24 (FAA). Following several Court-approved adjournments, and with the consent of defense counsel regarding additional time to respond, the Plaintiffs filed a Memorandum in response to the motions to dismiss. Dkt. entry no. 34. In their memorandum, the Plaintiffs implicitly and expressly consented to the dismissal of the complaint as to the County Freeholders:

“As an initial matter, because plaintiffs consent to the dismissal of Frontier and Mercer County, unless the court deems them to be indispensable parties, this brief addresses only the FAA motion and supporting memorandum.”

Id. at page 1.

By failing to contest the motion, the plaintiffs have waived any arguments they may have as to the County Freeholders. Laborers’ Int’l. Union of N. Am., AFL-CIO v. Foster Wheeler Energy Corp., 26 F. 3rd 375, 398 (3d Cir. 1994).

CONCLUSION

It follows that the Complaint should be dismissed as to the County Freeholders pursuant to the arguments set forth in the County Freeholders’ moving papers, the lack of any opposition to the requested relief, and with the Plaintiffs’ express consent.

Respectfully,

Arthur R. Sypek, Jr.
Mercer County Counsel

/S/ Paul R. Adezio
By: Paul R. Adezio (PA1340)
Deputy County Counsel

PRA:dl
cc: Potter & Dickson
McCarter & English, LLP

Hogan Lovell U.S. LLP

United States Attorney

Att: J. Andrew Ruymann, Assistant U.S. Attorney